ILLINOIS
Library Association

Thursday, 15 February 2001

Ms. Magalie Roman Salas
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Notice of Proposed Rule Federal
State Joint Board on Universal Service
CC Docket No. 96-45, FCC 01-31

Dear Ms. Salas:

On behalf of the Illinois Library Association (ILA), I am writing to comment on Commission's Notice of proposed concerning the Children's Internet Protection Act (CHIPA) regulations (66 Fed. Reg. 8374, proposed January 31, 2001). While ILA anticipates in participating or supporting a lawsuit to have portions of the law declared unconstitutional, we recognize the Federal Communications Commission's (FCC) statutory obligation under CHIPA, and therefore provide these comments.

Paragraph 3 of the Notice requests comment on the language of the certification required by CHIPA. It is our belief that the certification language is flawed. The distinction between Year 4 and Year 5 of the E-rate process is, in our estimation, incorrect. A strong argument could be made that no certification should be required at all until Year 5, rather than Year 4. The Act is to become effective in the "first program funding year" of the E-rate program. The FCC assumes the first year is the E-rate's Year 4 funding cycle (July 1, 2001–June 30, 2002). Yet the Year 4 E-rate process began with the applicants filing Form 470 starting July 1, 2000. Many of our schools and libraries had already filed both Form 470 and Form 471 before the Act was passed. Considering that the Year 4 program funding year started months before passage of this legislation, the first program funding year is really Year 5 of the E-rate program (July 1, 2002–June 30, 2003) and not Year 4. With Year 5 being the first year of the Act's implementation, the FCC also avoids the need to have a separate certification process for just the first year.

If the Commission believes that a separate certification process is required for theYear 4, in our view, the certification for libraries and/or schools that do not now utilize such measures should be:

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> "I certify that the recipient does not now utilize technology protection measures as defined in the Children's Internet Protection Act, 42 U.S.C. §254(h), and that in the following year we either will comply with the Act, will not seek applicable funds for that year, or will seek the waiver permitted by the Act."

Paragraph 5 of the Notice requests comment on the form of compliance certification to be used by consortia. In our view, the guiding principle should be ease of application. The consortia should be given the option of either certifying on behalf of members or of permitting members to individually certify to the Commission. Moreover, lack of compliance by one member of a consortia should not result in loss of funds to other consortia members.

Paragraph 7 of the Notice requests comment on enforcement procedures. We believe a recipient should be given until the final date of submission of Form 486 for the relevant year to submit certification. The Commission should also be required to give individual notice to the recipient of the need to have such certification in the Form 486 and failure to certify on the Form 471 should not be fatal. Even if the certification is not contained in the Form 486, upon receipt of such a form, the Commission should be required to give individual notice to the recipient of that failure and the recipient shall be given 60 days to cure without loss of funds.

There is no "technology protection measure" that can block all the visual depictions outlawed in CHIPA. Technology to filter objectionable text is inherently and fundamentally flawed, and these technologies are even less reliable in filtering the "visual depictions" referenced in CHIPA. Therefore, certification language should be altered to assure schools and libraries are not held responsible for flaws in this technology if they have previously been certified as compliant. The Illinois Library Association suggests:

> "The recipient complies with all relevant provisions of the Children's Internet Protection Act. Such compliance protects against access to visual depictions referenced in this Act, but it may not be able to prevent access to all visual depictions so referenced."

In Section 4 of the Notice, the Commission estimates that compliance would take only one minute, emphasizing the time to actually sign the certification. That, of course, ignores the considerable time that will be required to ensure that the certification is correct. The estimate should be revised to reflect that in order to ensure that certification is correct, the Commission estimates it make take the equivalent of several weeks of full-time work by certifying authorities.

Finally, a major omission is any clarification regarding the protection of legitimate rights to information. The Act should state clearly that constitutionally-protected rights to information should not be abrogated, and that failure to protect these rights is a violation of this Act that can disqualify schools and libraries from receiving E-rate funding. Specifically for public libraries, any rules should enable a library's "Internet Safety Policy" (section 1731) be crafted in a manner that allows unfiltered access for adults without always asking staff to turn off the filters. There are numerous procedural and technical implementation options (which could be provided, if requested) for providing unfiltered access for adults.

The Illinois Library Association appreciate the opportunity to express its opinions of these proposed regulations and hope these opinions are helpful in revising the proposed regulations.

Sincerely,

Robert P. Doyle
ILA Executive Director

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